

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 636

An Act to amend and reenact §§ 2.1-179, 2.1-179.3, and 23-19 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.1-179.4 and 2.1-179.5, relating to the powers and duties of the Treasury Board.

[S 176]

Approved April 5, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-179, 2.1-179.3, and 23-19 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.1-179.4 and 2.1-179.5 as follows:

§ 2.1-179. Powers and duties of Treasury Board.

The powers and duties of the Treasury Board shall be as follows:

1. To exercise general supervision over all investments of state funds;

2. To give advice and supervision in the financing of state buildings and to make recommendations, as requested, to the Governor on methods by which capital outlay requirements of the Commonwealth, including its agencies and institutions, may be financed;

3. To control and manage all sinking funds and other funds in possession of the Commonwealth in a fiduciary capacity;

4. To administer the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.);

5. Notwithstanding any provisions to the contrary, to make recommendations to the Governor on proposed bond issues *or other financing arrangements*, to approve the terms and ~~determine the~~ structure of bonds ~~issued or other financing arrangements executed by or for the benefit of~~ educational institutions and state agencies other than independent state authorities, ~~and act as paying agent for such bonds including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements, and agreements relating to the sale of bonds;~~

6. As to any tax exempt bonds for which it has issuing authority, either by statute or by act of the General Assembly, to take or cause to be taken and omit to take all actions, the taking or omission of which is necessary on behalf of the Commonwealth to prevent such bonds from being or becoming subject to federal income taxation or being considered to be "arbitrage bonds" within the meaning of federal tax laws, including compliance with the arbitrage rebate provisions thereof;

7. Notwithstanding any provisions to the contrary, to approve the terms and ~~determine the~~ structure of bonds ~~issued or other financing arrangements executed by or for the benefit of~~ state agencies, boards and authorities where debt service payments on such bonds *or other financing arrangements* are expected by such agency, board or authority to be made, in whole or in part, *directly or indirectly*, from appropriations of the Commonwealth, *including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements, and agreements relating to the sale of bonds;*

8. To establish debt structuring guidelines for *bonds or other financing arrangements executed by or for the benefit of* all state agencies, institutions, boards, and authorities ~~which issue bonds~~ where the debt service payments on such bonds *or other financing arrangements* are expected to be made, in whole or in part, *directly or indirectly*, from appropriations of the Commonwealth, *in which guidelines the Treasury Board may, in its sole discretion, include such items as it deems necessary and appropriate, including, but not limited to, defining terms such as "terms and structure" and "bonds and other financing arrangements" and exempting from its review and approval pursuant to subdivision 5 or 7 of this section (a) specific bond issues and other financing arrangements, (b) certain types or classes of bond issues and other financing arrangements, and (c) bond issues and other financing arrangements that are below a stated dollar amount;*

9. To do all acts and things necessary or convenient to efficiently carry out and enforce the powers granted to and duties imposed on it by law, including delegating to the State Treasurer or to a committee composed of not less than three members of the Treasury Board such powers and duties, as it may deem proper, to the extent designated and permitted by the Treasury Board; and

10. To exercise such other powers and perform such other duties as may be conferred or imposed upon it by law.

§ 2.1-179.3. Use of bond anticipation notes by the Treasury Board.

Whenever the General Assembly has enacted legislation pursuant to Article X, Section 9 (b), (c), or (d) of the Constitution of Virginia authorizing the issuance of bonds for ~~specific revenue-producing~~ capital projects *of the Commonwealth or any state agency, institution, board, or authority (a "state*

instrumentality") where debt service payments on such bonds are expected to be made in whole or in part from appropriations of the Commonwealth, the Treasury Board, by and with the consent of the Governor, is hereby authorized to borrow money in anticipation of the issuance of such bonds to provide funds, with any other available funds, to pay the costs of acquiring, constructing, renovating, enlarging, improving, and equipping any one or more of the capital projects for which such bonds have been authorized. Any such borrowing shall be evidenced by notes of the Commonwealth which shall be in such form, shall be executed in such manner, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the Treasury Board or the State Treasurer, when authorized by the Treasury Board, may determine. Such notes may bear interest at a rate or rates subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor. Such notes may be made payable from the proceeds of the bonds, other notes, or other sources of funds authorized by the General Assembly. The proceeds of the notes, to the extent not required to pay the principal or interest on maturing notes, or expenses associated therewith, shall be paid or otherwise made available to the Commonwealth or appropriate state instrumentality to pay the costs of such capital projects; however, the undertaking and obligation of (i) the Treasury Board to make such note proceeds available to the state instrumentality and (ii) the state instrumentality to pay or provide for the payment of the interest and principal coming due on the notes and to issue its own bonds or otherwise retire the notes within five years of the date of their initial issuance shall be set forth in a written agreement between the Treasury Board and the state instrumentality. No such notes shall be issued by the Treasury Board for or on behalf of a state instrumentality unless the Treasury Board shall have first determined that such written agreement provides reasonable assurance of the full and timely payment of the debt service on the notes.

No law authorizing the issuance of bonds and notes for which bond anticipation notes have been issued by the Treasury Board shall be repealed or otherwise vitiated without first providing for the payment of the related bond anticipation notes of the Treasury Board.

§ 2.1-179.4. Issuance of refunding bonds by the Treasury Board.

The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, from time to time, refunding bonds of the Commonwealth to refund any or all of the Commonwealth's bonds or other debt. The aggregate principal amount of such refunding bonds shall not exceed the amount required to redeem or otherwise provide for the payment of the unpaid principal of and interest on and any redemption premium payable on the bonds to be refunded to their date of redemption or payment, plus all expenses incurred in such refunding transaction.

§ 2.1-179.5. Combined issuance of general obligation debt by the Treasury Board.

Bonds and notes issued by the Treasury Board may be issued and sold at the same time with other bonds and notes issued by the Treasury Board either as separate issues, a combined issue, or a combination of both.

§ 23-19. Amount of bonds; purposes; resolutions; Treasury Board to be paying agent and to approve terms and structure; payment or purchase by institution; no personal liability.

(a) Every institution shall have power and is hereby authorized and empowered from time to time to execute its bonds in such aggregate principal amount as may be determined upon by its board and approved by the Governor. All such bonds shall be issued and sold through approved by the Treasury Board which pursuant to § 2.1-179, and the Treasury Board is hereby designated the issuing, sales, and paying agent of such institutions under this chapter. Such aggregate principal amount may include without limitation any engineering or inspection costs or legal or accounting expenses incurred by the institution in connection with the project for the erection of which such bonds are issued, and the cost of issuance of the bonds, including printing, engraving, advertising, legal and other similar expenses.

(b) Such bonds shall be authorized by resolution of the board, approved by the Governor, and may be issued in one or more series, shall bear such date or dates, mature at such time or times, bear interest at such rate not exceeding the rate specified in § 23-30.03 payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Such bonds may be sold at public or private sale for such price or prices as the board with the approval of the Governor shall determine, provided that the interest cost to maturity of the money received for any issue of such bonds shall not exceed the rate specified in § 23-30.03; however, prior to the issuance of bonds to finance any "project," the approval of the General Assembly must be obtained; and provided further, that biennially on or before the first day of September in the odd-numbered years, each educational institution shall submit to the Governor any project or projects and the estimated cost of each separate project such educational institution desires to have financed under the provisions of this chapter, and the Governor shall consider such projects and make his recommendation to the General Assembly in the budget submitted in accordance with the provisions of § 2.1-398. Each educational institution is authorized to finance only those projects approved by the General Assembly in the appropriations act for the biennium covered by such appropriations act, which projects need not be

limited to the projects recommended by the Governor.

(c) Such bonds may be issued for the corporate purpose or purposes of the institution specified by § 23-17 hereof or to carry out the powers conferred on the institution by § 23-18 hereof.

(d) Any resolution or resolutions authorizing such bonds may contain a provision or provisions which shall be part of the contract with the holders of such bonds as to:

(1) Fixing, revising, charging and collecting fees, rents and charges for or in connection with the use, occupation or services of the project and pledging the same and any increases in revenues to be derived from any existing facilities at such institution resulting from any increase in the fees, rents or charges for or in connection with the use, occupation or services of any such existing facilities to the payment of the principal of and the interest on such bonds;

(2) Fixing, revising, charging and collecting fees, rents and charges for or in connection with the use, occupation or services of any existing facilities at such institution and pledging the same to the payment of the principal of and the interest on such bonds;

(3) Fixing, revising, charging and collecting student building fees and other student fees from students enrolled at such institution and pledging the same in whole or in part to the payment of the principal of and the interest on such bonds;

(4) Pledging to the payment of the principal of and the interest on such bonds any moneys available for the use of such institution, including, but not limited to, and subject to *Treasury Board* guidelines to be promulgated by the Secretary of Finance and approval pursuant to § 2.1-179, moneys appropriated to such institution from the general fund of the Commonwealth or from nongeneral funds, without regard to the source of such moneys, and which are not required by law or by previous binding contract to be devoted to some other purpose;

(5) Paying the cost of operating and maintaining any project and any such existing facilities from any one or more of the revenue sources mentioned in subdivisions (1), (2), (3) and (4) of this subsection creating reserves for such purposes and providing for the use and application thereof;

(6) Creating sinking funds for the payment of the principal of and the interest on such bonds, creating reserves for such purposes and providing for the use and application thereof;

(7) Limiting the right of the institution to restrict and regulate the use, occupation and services of the project and such other existing facilities or the services rendered therein;

(8) Limiting the purposes to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied;

(9) Limiting the issuance of additional bonds;

(10) Setting forth the procedure, if any, by which the terms of any contract with the holders of such bonds may be amended or abrogated and the manner in which such consent of such holders to any such amendment or abrogation may be given; and

(11) Setting forth such other condition or conditions as may be required by the United States of America or any federal agency as a condition precedent to or a requirement in connection with the obtaining of a direct grant or grants of money for or in aid of the erection of any project, or to defray or to partially defray the cost of labor and material employed in the erection of any project, or to obtain a loan or loans of money for or in aid of the erection of any project from the United States of America or any federal agency, provided that such other condition or conditions are approved by the Governor.

(e) The power and obligation of an institution to pay any bonds issued under this chapter shall be limited. Such bonds shall be payable only from any one or more of the revenue sources mentioned in subdivisions (1), (2), (3) and (4) of subsection (d) of this section and pledged therefor pursuant to a resolution adopted under said subsection (d). Such bonds shall in no event constitute an indebtedness of the institution, except to the extent of the collection of such revenues and such institution shall not be liable to pay such bonds or the interest thereon from any other funds; and no contract entered into by the institution pursuant to subsection (b) of this section shall be construed to require the costs or expenses of operation and maintenance of the project for the erection of which the bonds are issued and any such other existing facilities to be paid out of any funds other than the revenues derived from the sources mentioned in subdivisions (1), (2), (3) and (4) of subsection (d) of this section and pledged therefor. Any provision of the general laws to the contrary notwithstanding, any bonds issued pursuant to the authority of this chapter shall be fully negotiable within the meaning and for all the purposes of Title 8.3.

(f) Neither the Governor nor the members of the board nor any person executing such bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(g) The institution shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest. All bonds so purchased shall be cancelled unless purchased as an endowment fund investment. This paragraph shall not apply to the redemption of bonds.

(h) In any case in which an institution shall have obtained a loan for or in aid of the erection of any project from the United States of America or any federal agency, which loan requires the establishment of a debt service reserve, the institution, with the consent of the Governor, may deposit securities in a

separate collateral account in an amount equal to the required debt service reserve, which securities shall be pledged to meet the debt service requirements only if the revenues derived from any one or more of the sources mentioned in subdivisions (1), (2), (3) and (4) of subsection (d) of this section and pledged for the payment of such loan become insufficient for such purpose. The face value of United States government securities and the market value of all other securities shall be deemed to be the value of any securities so deposited. Nothing herein shall be construed as prohibiting repayment of any portion of such loan from income derived from the securities so deposited. No securities shall be deposited in any such collateral account unless the same shall have been purchased with funds, the use of which is in nowise limited or restricted or shall have been donated to such institution for the purpose of establishing such debt service reserve.